

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Rothschild v. Gildred

No. 23-cv-02105-LJC (N.D. Cal. June 25, 2025) · No. 23-cv-02105-LJC · Decided June 25, 2025

OPINION

Rothschild v. Gildred

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 MAYER AMSCHEL ROTHSCHILD, Case No. 23-cv-02105-LJC 8 Plaintiff,

ORDER GRANTING MOTION TO

9 v. DISMISS

10 STEPHANIE ANN GILDRED, et al., Re: Dkt. No. 59 Defendants. 11 12 Before the Court is
Defendants Stephanie Gildred and Lorton Management Corporation's 13 Motion to Dismiss
Plaintiff Mayer Amschel Rothschild's Second Amended Complaint. Having 14 considered the
papers submitted by the parties and the oral arguments presented, for the reasons 15 discussed
below, Defendants' Motion is granted and Plaintiff's Second Amended Complaint is 16 dismissed
with prejudice.

17 I. BACKGROUND¹

18 Plaintiff lived at 128 Lorton Avenue, Unit #4, Burlingame, California (the premises) with 19
his then-fiancé, Defendant Stephanie Gildred, until December 2020. Gildred and her property 20
management company, Lorton Management Corporation (Lorton Management) (together, 21
Defendants), owned 128 Lorton Avenue and were "responsible parties for the subject premises."
22 ECF No. 56 at 2. "During Plaintiff's tenancy, a significant rodent infestation developed on the
23 property, rendering it unsafe and uninhabitable." Id. at 2. Plaintiff reported the problem to 24
Defendants, who failed to remedy the infestation. Id. 25 26 1 Because a plaintiff's factual
allegations are generally taken as true in resolving a motion to 27 dismiss under Rule 12(b)(6),
this section summarizes Plaintiff's allegations as if true. Where 1 While Plaintiff was living at the
premises, The Pacific Companies began constructing a 2 five-story parking garage at the adjacent
lot. Around the same time, The Pacific Companies 3 approached Plaintiff and Gildred with a
business proposal to develop 128 Lorton Avenue into a 4 five-story condominium. ECF No. 12 at
2. Plaintiff invested over \$2,000,000 into improving 128 5 Lorton. Id. at 4. After Plaintiff moved
out in December 2020, and, apparently, Plaintiff and 6 Gildred's relationship ended, Gildred sold
128 Lorton without compensating Plaintiff. Id. at 3. 7 Plaintiff sued The Pacific Companies

regarding the business proposal to develop 128 8 Lorton Avenue in April 2023. See *Rothschild v. The Pacific Companies*, 23-cv-01721-LJC (N.D. 9 Cal.), ECF No. 1.2 He sued Gildred and Lorton Management regarding the sale of 128 Lorton at 10 the same time. See *Rothschild v. Gildred, et. al.*, 23-cv-01712-JD (N.D. Cal.). ECF No. 1.3 He 11 filed this action less than one month later. See *Rothschild v. Gildred*, 23-cv-02105-LJC (N.D. Cal.

12 May 1, 2023), ECF No. 1. His initial complaint against Defendants asserted claims for breach of

13 the covenant of quiet enjoyment, breach of warranty, strict liability, punitive damages, negligence 14 and negligence per se. Id. Plaintiff amended his complaint and the action was related to the 15 ongoing suit against The Pacific Companies in front of the undersigned magistrate judge. ECF

16 Nos. 12, 27.

17 Plaintiff's First Amended Complaint asserted claims for the breach of quiet enjoyment, 18 strict liability, negligence, and negligence per se. See ECF No. 12. Defendants moved to dismiss 19 the First Amended Complaint and the Court granted Defendants' motion to dismiss with leave to 20 amend. ECF Nos. 38, 55. The Court directed Plaintiff to file his Second Amended Complaint no 21 later than March 25, 2025. Id. at 11. Plaintiff proceeded to file his Second Amended Complaint 22 on March 24, 2025, asserting claims for negligence, negligence per se, and private and public 23 nuisance. ECF No. 56. 24 Based on Plaintiff's request for a stay in the related case *Rothschild v. The Pacific 25 Companies*, 23-cv-01721, the Court stayed this action for thirty days and extended Defendants' 26 2 He later added Gildred and Lorton Management as defendants in that action, but subsequently 27 removed them. Id. at ECF Nos. 18, 24. 1 deadline to respond to Plaintiff's Second Amended Complaint to May 8, 2025. ECF No. 57. 2 While the case was stayed and without leave of the Court, Plaintiff proceeded to file a further 3 amended complaint, his third, on May 5, 2025.4 ECF No. 58. The Third Amended Complaint 4 asserts claims for negligence, negligence per se, private and public nuisance, and unjust 5 enrichment/quasi-contract. Id. Pursuant to the Court's previous order, Defendants filed their 6 motion to dismiss Plaintiff's Second Amended Complaint on May 7, 2025, arguing that Plaintiff 7 had again failed to state a claim. ECF No. 59. They requested that the Court strike Plaintiff's 8 Third Amended Complaint as being untimely filed. Id. at 2 n.1. Plaintiff opposed the motion to 9 dismiss, Defendants filed a reply brief, and, without leave of the Court, Plaintiff filed a sur-reply. 10 ECF Nos. 60, 62-63. The Court held a hearing the motion to dismiss on June 17, 2025.

11 II. PLAINTIFF'S THIRD AMENDED COMPLAINT

12 Federal Rule of Civil Procedure 15(a)(1) provides that a "party may amend its pleading 13 once as a matter of course no later than" twenty-one days after service or twenty-one days after 14 service of a responsive pleading or motion. "In all other cases, a party may amend its pleading 15 only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). 16 Plaintiff here filed his Third Amended Complaint without seeking or obtaining leave of the Court

17 or Defendants' permission, well after the Court's March 25, 2025 deadline and days before 18 Defendants' response to Plaintiff's Second Amended Complaint was due. See ECF Nos. 57, 58. 19 Plaintiff's failure to obtain the Court's leave to amend is sufficient grounds to strike the Third 20 Amended Complaint. *Taa v. Chase Home Fin., LLC*, No. 11-cv-00554, 2012 WL 507430, at *1 21 (N.D. Cal. Feb. 15, 2012) ("An amendment that has been filed or served without leave of court or 22 consent of the defendants is without legal effect."); *Amezquita v. Garcia-Cortez*, No. 20-cv-08285, 23 2024 WL 2305612, at *4 (N.D. Cal. May 21, 2024) (striking "amended second 24 amended 24 complaint" filed without leave or any explanation "as to why yet another amendment should be 25 granted"). Plaintiff's Third Amended Complaint is accordingly stricken, although, in its 26 27 4 The complaint filed at ECF No. 58 is labeled "Second Amended Complaint," but, as it was filed 1 discretion, the Court considers Plaintiff's allegations in deciding whether to grant Plaintiff further 2 leave to amend. See *Rosasen v. Kingdom of Norway*, No. 21-cv-6811, 2022 WL 4390459, at *11 3 (C.D. Cal. July 14, 2022), recommendation adopted, 2022 WL 4389673 (C.D. Cal. Sept. 19, 4 2022), *aff'd*, No. 22-55980, 2024 WL 1612235 (9th Cir. Apr. 15, 2024) (considering improperly 5 filed second amended complaint's failure to cure deficiencies of the first amended complaint in 6 dismissing the first amended complaint with prejudice).

7 III. LEGAL STANDARD

8 A complaint may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure 9 "based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a 10 cognizable legal theory." *Godecke v. Kinetic Concepts, Inc.*, 937 F.3d 1201, 1208 (9th Cir. 2019) 11 (quotations omitted). A complaint generally must include a "short and plain statement of the 12 claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). 13 A court reviewing a 12(b)(6) motion must "accept all factual allegations in the complaint 14 as true and construe the pleadings in the light most favorable to the nonmoving party." *Outdoor 15 Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007). However, 16 "[t]hreadbare recitals of the elements of a cause of action . . . do not suffice," and a court need not 17 credit "legal conclusions" or "mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678– 18 79 (2009). The allegations in the complaint "must be enough to raise a right to relief above the 19 speculative level[.]" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint must 20 demonstrate "facial plausibility" by pleading "factual content that allows the court to draw the 21 reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 22 678. When the complaint has been filed by a pro se plaintiff, a court must "construe the 23 pleadings liberally and . . . afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 24 F.3d 338, 342 (9th Cir. 2010) (quotations omitted). 25 A court's review under Rule 12(b)(6) is generally limited to the contents of a complaint, 26 with the exception of materials incorporated by reference in a complaint or materials subject to 27 judicial notice. See *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018). 1 admits" at oral argument. *CoreCivic Inc. v. Candide Grp. LLC*, No. C-20-03792, 2021 WL 2 1267259, at *5 (N.D. Cal. Apr. 6, 2021). "A

litigation position...conveyed to a court becomes 3 binding in any forum in which the same controversy arises,' including judicial admissions during 4 oral argument." Id. (quoting *ACLU of Nevada v. Mastro*, 670 F.3d 1046, 1065 (9th Cir. 2012)); 5 see *Davis v. Pacificsource Health Plans*, No. CV 19-180, 2020 WL 1812114, at *1 (D. Mont. Apr. 6 9, 2020) ("Courts have discretion to treat factual statements made in briefs and at oral argument as 7 judicial admissions."). 8 "[L]eave to amend 'shall be freely given when justice so requires.'" *Leadsinger, Inc. v. 9 BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008) (quoting Fed. R. Civ. P. 15(a)). "[T]he rule 10 favoring liberality in amendments to pleadings is particularly important for" for pro se litigants, as 11 they are "[p]resumably unskilled in the law [and] far more prone to making errors in pleading than 12 the person who benefits from the representation of counsel." *Lopez v. Smith*, 203 F.3d 1122, 1131 13 (9th Cir. 2000) (quotations omitted). However, leave to amend may be denied if allowing 14 amendment would cause "undue delay" or "undue prejudice to the opposing party[.]" amendment 15 is sought in bad faith or due to "dilatory motive on the part of the movant," if there has been 16 "repeated failure to cure deficiencies by amendments previously allowed," or further amendment 17 would be futile. *Sharkey v. O'Neal*, 778 F.3d 767, 774 (9th Cir. 2015) (quoting *Forman v. Davis*, 18 371 U.S. 178, 182 (1962)). A court's discretion to deny leave to amend "is particularly broad" 19 when it "has already granted a plaintiff leave to amend[.]" *Chodos v. W. Publ'g Co.*, 292 F.3d 20 992, 1003 (9th Cir. 2002) (quotations omitted).

21 IV. ANALYSIS

22 Defendants argue that Plaintiff's Second Amended Complaint does not include sufficient 23 factual allegations to state a claim. The Court agrees. 24 A. Negligence 25 Plaintiff asserts claims for negligence and negligence per se. To properly plead 26 negligence, Plaintiff must allege facts which, taken as true, establish that Defendants had a duty 27 towards him, that they breached their duty, and that their breach caused him harm. See *Carlsen v. 1* from Defendants and that, as his landlords, Defendants owed Plaintiff "a duty to maintain the 2 premises in a habitable and safe condition." ECF No. 56 at 4. He asserts that they breached this 3 duty by failing to remedy "a significant rodent infestation" at the premises. Id. at 2. He alleges 4 that as a "direct result" of this breach, he "suffered harm, including health risks, emotional 5 distress, and financial losses[.]" and then proceeds to list types of harm that a rodent infestation 6 may cause. Id. at 4-6. These types of harm Plaintiff include health risks ("Disease Transmission – 7 Rodents carry diseases such as Hantavirus, Salmonella, Leptospirosis, and Rat-Bite 8 Fever....Allergic Reactions & Respiratory Issues...Food Contamination – Rodents chew through 9 food packaging, leaving feces and urine that can lead to serious foodborne illnesses"), property 10 damage ("Structural Damage – Rodents chew through walls...Furniture & Belongings – Rodents 11 nest in soft materials like furniture, mattresses, and clothing, damaging property), emotional 12 distress ("Embarrassment & Social Isolation – Infestations can cause emotional distress due to 13 stigma and social discomfort in hosting guests"), and financial costs ("Pest control treatments and 14 structural repairs can be expensive...Persistent infestations can decrease rental/home value and 15 make selling or renting

difficult”). *Id.* (emphases removed). That a rodent infestation could, 16 hypothetically, cause issues such as diseases “spread through droppings, urine, saliva, or bites” or 17 property damage from chewing “through walls, insulation pipes, and even electrical wiring” is 18 insufficient to support Plaintiff’s conclusory claim that Defendants’ alleged breach harmed him. 19 ECF No. 56 at 4-5; see *Twombly*, 550 U.S. at 555 (holding that allegations in a complaint “must 20 be enough to raise a right to relief above the speculative level”). Plaintiff wholly fails to explain 21 how he was actually harmed. Plaintiff’s general assertions that Defendants breached their duty to 22 him harmed him “do not suffice[.]” *Iqbal*, 556 U.S. at 678-79. Plaintiff accordingly has not 23 alleged sufficient facts to state a plausible negligence claim. 24 Plaintiff asserts that Defendants “violated California Health & Safety Code § 17920.3 and 25 local housing ordinances[.]” which constitutes negligence per se. ECF No. 56 at 4. “[N]egligence 26 per se is not...an independent cause of action under California law[.]” *Beaver v. Tarsadia Hotels*, 27 29 F. Supp. 3d 1294, 1322 (S.D. Cal. 2014), *aff’d*, 816 F.3d 1170 (9th Cir. 2016). Instead, it is 1 ordinary negligence must be viable before the presumption of negligence per se based on the 2 violation of a statute, regulation, or ordinance may be employed.” *Id.* As Plaintiff has not alleged 3 sufficient facts to state an underlying claim for negligence, his negligence per se claim likewise 4 fails. Additionally, Plaintiff must show that Defendants’ violation of a “statute, ordinance, or 5 regulation...proximately caused death or injury to a person[.]” *Taulbee v. EJ Distribution Corp.*, 6 35 Cal. App. 5th 590, 596 (2019) (citation omitted). His general allegations regarding harm, 7 discussed above, are insufficient. 8 The Court accordingly dismisses Plaintiff’s negligence and negligence per se claims. 9 Although pro se plaintiffs must be given liberal leave to amend, the Court has provided Plaintiff 10 with two opportunities to amend his complaint and previously informed Plaintiff that his 11 negligence and negligence per se claims lacked sufficient factual allegations. *Lopez*, 203 F.3d at 12 1131; see ECF Nos. 8, 55 at 9-10. Plaintiff failed to correct the deficiencies. See *Sharkey*, 778 13 F.3d at 774. 14 Moreover, the Court finds that further amendment of these claims would be futile. 15 Plaintiff’s improperly filed Third Amended Complaint repeats the generalized statements of harm 16 —such as “Property damage[.]” “Health risks from zoonotic diseases (e.g., hantavirus, salmonella, 17 leptospirosis)” and “property loss, health problems, and emotional distress”—without identifying 18 the specific harm Plaintiff experienced as a result of the rodent infestation. ECF No. 58 at 2-3. 19 When asked at the hearing to explain how he was harmed by the rodent infestation for the 20 purposes of evaluating if further leave to amend was warranted, Plaintiff informed the Court that 21 he had breathing difficulties, but that this was caused by construction on the neighboring lot rather 22 than Defendants’ alleged breach. Plaintiff has demonstrated repeatedly that he cannot allege how 23 Defendants’ purportedly negligent acts harmed him. See *Jordan v. Graziani*, No. C 03-2414, 2008 24 WL 2326303, at *2 (N.D. Cal. June 3, 2008) (finding “that further leave to amend would be futile” 25 where the court had already explained a complaint’s deficiencies and the “plaintiff was unable to 26 cure them” in a subsequently amended complaint). And, as Defendants note, California’s statute 27 1 of

limitations for personal injury negligence claims is two years.⁵ ECF No. 59 at 6; see Cal. Code 2 Civ. P. § 335.1. At the hearing, Plaintiff unequivocally stated that he moved out of the premises at 3 128 Lorton Avenue in December 2020. The Court takes his statement as true. See CoreCivic Inc., 4 2021 WL 1267259, at *5 (quoting Masto, 670 F.3d 1065) (explaining that courts are generally 5 limited to the complaint in ruling on a motion to dismiss but may accept as true facts a plaintiff 6 “freely admits...at the hearing” because “[a] litigation position... conveyed to a court becomes 7 binding in any forum in which the same controversy arises, including judicial admissions during 8 oral argument”). Based on Plaintiff’s admission at the hearing, the statute of limitations for 9 Plaintiff’s negligence claims would have expired, at the latest, in December 2022. Plaintiff filed 10 this suit in May 2023, well after the statute of limitations expired. See ECF No. 1 at 8. 11 Plaintiff argues that the statute of limitations has not expired because he “continued to 12 suffer exposure, harm, and deterioration of living conditions within the two-year limitations 13 period.” ECF No. 60 at 3. He contends that, “Under California’s ‘continuing violation’ and 14 ‘discovery rule’ doctrines, limitations do not bar claims that involve ongoing harm.” Id. (citing 15 Aryeh v. Canon Business Solutions, Inc., 55 Cal. 4th 1185, 1192 (2013). “The continuing 16 violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of 17 limitations, treating the limitations period as accruing for all of them upon commission or 18 sufferance of the last of them.” Aryeh, 55 Cal. 4th at 1192. This doctrine is inapplicable. Plaintiff 19 moved out of the premises in December 2020, making December 2020 the last time he could have 20 been harmed by Defendants’ alleged negligence regarding the rodent infestation at the premises. 21 He did not file suit within two years of when Defendants could have most recently acted 22 negligently. See Hu v. Wang, No. 24-cv-01192, 2024 WL 5275055, at *6 (C.D. Cal. Nov. 25, 23 2024) (explaining that “the continuing violations doctrine is unavailing” where a plaintiff “did not 24 file suit within” the statutory period after “the most recent violation”). The “discovery rule” that 25 Plaintiff references “postpones accrual of a cause of action until the plaintiff discovers, or has 26 reason to discover, the cause of action.” Aryeh, 55 Cal. 4th at 1192. This doctrine has no 27 1 relationship to the “ongoing harm” that Plaintiff argues he experienced while living at the 2 premises. ECF No. 60 at 3.6 3 As Plaintiff has had multiple opportunities to allege sufficient facts to state a claim for 4 negligence and negligence per se and has repeatedly failed to cure these deficiencies, and the 5 Court determines that opportunities for further amendment would be futile and only delay the case 6 and cause prejudice to Defendants, Plaintiff’s negligence and negligence per se claims are 7 dismissed with prejudice. 8 B. Private and Public Nuisance 9 In his Second Amended Complaint, Plaintiff alleges that Defendants created a private and 10 public nuisance. ECF No. 56 at 4. Plaintiff’s nuisance claims are devoid of factual allegations. In 11 their entirety, Plaintiff’s nuisance claims read: Defendants’ failure to remedy the infestation created conditions that 12 substantially interfered with Plaintiff’s use and enjoyment of the property. The infestation posed a public health risk, affecting other 13 tenants and the community at large. Defendants’ inaction constitutes a nuisance under California law. 14 15 ECF No. 56 at 4. Plaintiff

alleges that there was an “infestation,” but does not otherwise explain 16 with any specificity how this interfered with his “use and enjoyment” of the premises or impacted 17 other tenants or the community. Id. While Plaintiff is only required to include “a short and plain 18 statement,” he must do more than just recite the elements of a cause of action for nuisance and 19 state legal conclusions. Fed. R. Civ. P. 8(a); see *Iqbal*, 556 U.S. at 678–79. “Despite the 20 deference the court must pay to the plaintiff’s allegations, it is not proper for the court to assume 21 that ‘the [plaintiff] can prove facts that [he or she] has not alleged[.]’” *Spice Jazz LLC v. 22 Youngevity Int’l, Inc.*, No. 19-cv-583, 2019 WL 4573705, at *2 (S.D. Cal. Sept. 19, 2019) (quoting 23 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 24 (1983)). Plaintiff’s nuisance claims are accordingly dismissed. 25 As with his negligence claims, Plaintiff’s nuisance claims are dismissed with prejudice. 26 27 6 Moreover, Plaintiff’s allegations that he informed Defendants of the infestation and they failed to 1 Although Plaintiff raised his nuisance claim for the first time in this action in the Second 2 || Amended Complaint and thus has not been provided an opportunity to amend his claim, he 3 || previously raised a nuisance claim in his related action against The Pacific Companies. The Court 4 || granted in part and denied in part Plaintiff’s nuisance claims in that action, laying out the elements 5 to state a claim for private and public nuisance and explaining to Plaintiff that he was required to 6 allege facts to support his claims. See *Rothschild v. The Pacific Companies*, 23-cv-01721-LJC 7 (N.D. Cal. Mar. 4, 2025), ECF No. 73 at 17-18. Despite this instruction, Plaintiff did not include 8 factual allegations to support his new nuisance claims asserted in this action. The Court 9 accordingly finds that justice does not warrant providing Plaintiff further opportunity to amend 10 || this claim.

11 || Vv. CONCLUSION

12 The Court strikes Plaintiff’s Third Amended Complaint and grants Defendants’ motion to 13 dismiss the Second Amended Complaint. Despite having repeated opportunities to amend, 14 || Plaintiff’s Second Amended Complaint fails to allege facts sufficient to state a claim against 3 15 Defendants. This case is accordingly dismissed with prejudice and the Clerk is directed to close a 16 || the file. = 17 IT IS SO ORDERED. |) Dated: June 25, 2025 19 20

J. CI§ OS

21 ed States Magistrate Judge 22 23 24 25 26 27 28